

Office of the Secretary, DHS

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AUTHORITY: Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C., Ch. 1, sections 101 et seq.); 5 U.S.C. 301; 31 U.S.C. 3801-3812.

SOURCE: 70 FR 59211, Oct. 12, 2005, unless otherwise noted.

§ 13.1 Basis, purpose, scope and effect.

(a) *Basis*. This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-3812. Section 3809 of title 31, United States Code, requires each authority to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose*. This part:

(1) Establishes administrative procedures for imposing civil penalties and assessments against Persons who Make, submit, or present, or cause to be Made, submitted, or presented, false, fictitious, or fraudulent Claims or written Statements to the Authority or to certain others; and

(2) Specifies the hearing and appeal rights of Persons subject to allegations of liability for such penalties and assessments.

(c) *Scope*. This part applies to all components of the Department of Homeland Security.

(d) *Effect*. (1) This part applies to program fraud cases initiated by any component of the Department of Homeland Security on or after October 12, 2005.

(2) Program fraud cases initiated by any component of the Department of Homeland Security before October 12, 2005, but not completed before October 12, 2005, will continue to completion under the rules and procedures in effect before this part.

§ 13.2 Definitions.

The following definitions have general applicability throughout this part:

(a) *ALJ* means an Administrative Law Judge in the Authority appointed pursuant to 5 U.S.C. 3105 or detailed to the Authority pursuant to 5 U.S.C. 3344. An ALJ will preside at any hearing convened under the regulations in this part.

(b) *Authority* means the Department of Homeland Security.

(c) *Authority Head* means the Deputy Secretary, Department of Homeland Security, or another officer designated by the Deputy Secretary.

(d) *Benefit* means, in the context of a Statement, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(e) *Claim* means any request, demand, or submission:

(1) Made to the Authority for property, services, or money (including money representing grants, loans, insurance, or Benefits);

(2) Made to a recipient of property, services, or money from the Authority or to a party to a contract with the Authority:

(i) For property or services if the United States:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or Benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

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(3) Made to the Authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) *Complaint* means the administrative Complaint served by the Reviewing Official on the Defendant under § 13.7.

(g) *Defendant* means any Person alleged in a Complaint under § 13.7 to be liable for a civil penalty or assessment under § 13.3.

(h) *Government* means the Government of the United States.

(i) *Individual* means a natural Person.

(j) *Initial Decision* means the written decision of the ALJ required by § 13.10 or § 13.37, and includes a revised Initial Decision issued following a remand or a motion for reconsideration.

(k) *Investigating Official* means the Inspector General of the Department of Homeland Security or an officer or employee of the Office of the Inspector General designated by the Inspector General and eligible under 31 U.S.C. 3801(a)(4)(B).

(l) *Knows or Has Reason to Know*, means that a Person, with respect to a Claim or Statement:

(1) Has actual knowledge that the Claim or Statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the Claim or Statement; or

(3) Acts in reckless disregard of the truth or falsity of the Claim or Statement.

(m) *Makes* includes presents, submits, and causes to be made, presented, or submitted. As the context requires, Making or Made will likewise include the corresponding forms of such terms.

(n) *Person* means any Individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(o) *Representative* means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. This definition is not intended to foreclose *pro se* appearances. That is, an Individual may appear for himself or herself, and a corporation or other entity may appear by

an owner, officer, or employee of the corporation or entity.

(p) *Reviewing Official* means the General Counsel of the Department of Homeland Security, or other officer or employee of the Department who is designated by the General Counsel and eligible under 31 U.S.C. 3801(a)(8).

(q) *Statement* means any representation, certification, affirmation, Document, record, or accounting or book-keeping entry Made:

(1) With respect to a Claim or to obtain the approval or payment of a Claim (including relating to eligibility to Make a Claim); or

(2) With respect to (including relating to eligibility for):

(i) A contract with, or bid or proposal for a contract with the Authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or Benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or Benefit; or

(ii) A grant, loan, or Benefit from, the Authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or Benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or Benefit.

§ 13.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, a Person will be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,500 for each Claim (as adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-140), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104-134)) if such Person Makes a Claim that such Person Knows or Has Reason to Know:

(i) Is false, fictitious, or fraudulent;